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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
)

Revision of Part 2 of the )  
Commission's Rules Relating to )  
the Marketing and Authorization )  
of Radio Frequency Devices. )  
)

ET Docket No. 94-45  
RM-8125

DOCKET FILE COPY ORIGINAL

TO: The Commission

**REPLY COMMENTS OF**  
**INTERNATIONAL BUSINESS MACHINES CORPORATION**

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**REPLY COMMENTS OF**  
**INTERNATIONAL BUSINESS MACHINES CORPORATION**

International Business Machines Corporation ("IBM")  
respectfully submits these reply comments in the above-referenced  
proceeding.<sup>1/</sup>

I. IBM SUPPORTS MINOR MODIFICATIONS TO THE COMMISSION'S  
PROPOSED RULES PROPOSED BY CERTAIN COMMENTERS.

The rule changes proposed by the Commission in the  
NPRM represent a significant step toward "harmoniz[ing]" the  
marketing rules for radio frequency ("RF") devices and removing  
confusing "inconsistencies and unnecessary restrictions."<sup>2/</sup> IBM  
agrees with a number of the comments seeking certain minor  
revisions to these proposals in order to clarify their intent.

<sup>1/</sup> Revision of Part 2 of the Commission's Rules  
Relating to the Marketing and Authorization of Radio Frequency  
Devices, Notice of Proposed Rulemaking, 9 FCC Rcd 2702  
(1994) (hereinafter "NPRM").

<sup>2/</sup> NPRM, 9 FCC Rcd at 2703.

**A. The Disclaimer Notice in Section 2.803(c)  
Should be Clarified.**

IBM shares the view, expressed by AT&T Corp.

("AT&T") and the Computer and Business Equipment Manufacturers Association ("CBEMA"), that the wording of the disclaimer notice required under proposed Sections 2.803(c) and (e) should be modified to apply more clearly to RF devices that are subject to verification as well as certification.<sup>3/</sup> Sections 2.803(c) and (e) would permit the display, demonstration or operation of RF devices prior to equipment authorization or compliance determination provided that, inter alia, notice is given that the "device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained."<sup>4/</sup> As AT&T and CBEMA point out, verification is not actually a form of "authorization" that is "obtained." To avoid this confusion, IBM proposes that the notice be revised to read:

This device has not demonstrated compliance with the radio frequency emissions standards established by the Federal Communications Commission. This device may not be sold, offered for sale, or delivered to the general public until compliance determination is complete and any necessary FCC authorization is obtained.

IBM also believes that the disclaimer should allow different language for situations in which prototypes of approved devices are used for display at trade shows or exhibitions. In

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<sup>3/</sup> See AT&T Comments at 4; CBEMA Comments at 2.

<sup>4/</sup> See NPRM, 9 FCC Rcd at 2707, Appendix B, proposed 47 C.F.R. §§ 2.803(c) and (e) (emphasis added).

that situation a "ship-level" device that will be marketed to the public may have been properly verified or certified, but, for a number of reasons, the manufacturer may wish to use for display a prototype of the device that is "down-level" and therefore not marketable. IBM recommends that the Commission permit a second, abbreviated type of disclaimer to address this situation, which would read, for example:

This is a prototype of an FCC compliant device. Use of this prototype is for demonstration or evaluation purposes only. This labelled prototype may not be sold to the general public.

**B. The Commission Should Clarify that Modifying Entities Need To Keep Design Drawings and Specifications Only for their Modifications.**

As noted in its comments, IBM supports the Commission's proposal to make any party that modifies an RF device responsible for compliance with respect to the device as modified. Proposed rule 2.938 requires such parties to maintain a "record of the original design drawings and specifications and all changes that have been made" to the device.<sup>5/</sup> As several commenters have noted, this rule could be understood to require modifying entities to obtain original drawings from the original grantee.<sup>6/</sup> IBM agrees that such a requirement would impose unfair and unnecessary burdens on both the modifying party and

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<sup>5/</sup> NPRM, 9 FCC Rcd at 2709, Appendix B, proposed 47 C.F.R. § 2.938(a)(1).

<sup>6/</sup> See AT&T Comments at 9, CBEMA Comments at 6.

the original grantee. IBM suggests that the rule be revised to require modifying entities to maintain only design drawings and specifications relating to the modifications that they have made, and photographs of the equipment as modified.

**C. There is No Need To Impose Limits on the Number of Devices That May Be Operated at a User's Site for Beta Testing.**

Proposed rule 2.803(e) contemplates the pre-authorization or pre-verification operation of prototype RF devices for so-called "beta testing," i.e., evaluation of product performance and determination of customer acceptability.<sup>7/</sup> Two commenters have suggested imposing a numerical limit on the number of devices that may be operated under this section.<sup>8/</sup> IBM believes that such a limit is unnecessary. As IBM noted in its opening comments, the distribution of prototype RF devices to non-residential users for beta testing does not implicate any of the Commission's concerns regarding mass consumer marketing. The entities to which manufacturers would distribute such prototypes do not market the equipment to the public; they use them in a confined commercial environment as part of their own development or beta testing process. In addition, IBM's experience with the importation rules suggests that imposing fixed numerical limits would create substantial administrative burdens for both the

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<sup>7/</sup> NPRM, 9 FCC Rcd at 2707, Appendix B, proposed 47 C.F.R. § 2.803(e).

<sup>8/</sup> See AT&T Comments at 6; CBEMA Comments at 4.

Commission and manufacturers. Fixed limits often generate waiver requests as situations arise in which the predetermined limit turns out to be unreasonably low. Such waiver requests are time consuming for manufacturers to complete and file, and unnecessarily burdensome for the Commission to review and process given the limited purposes for which beta testing is conducted.

**D. IBM Agrees That the Exceptions to the Marketing Prohibitions, in Proposed Section 2.803(e), Should Apply To Intentional Radiators.**

The comments exhibit some confusion as to whether proposed Section 2.803(e), which contains exemptions to the marketing restrictions in proposed Section 2.803(a), applies to intentional radiators.<sup>9/</sup> Section 2.803(e), by its terms, applies to "any radio frequency device."<sup>10/</sup> Radio frequency devices include "incidental, unintentional, and intentional radiators."<sup>11/</sup> Thus, proposed Section 2.803(e) would apply to intentional radiators. IBM strongly supports this interpretation of the proposed rules. The Commission initiated this proceeding to harmonize the marketing rules for all RF devices and remove

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<sup>9/</sup> See AT&T Comments at 2 (section 2.803(e) applies to intentional radiators); Comments of the Telecommunications Industry Association ("TIA") at 3 (same); Comments of Electronic Industries Association ("EIA") at 6 (intentional radiators excluded from coverage of Section 2.803(e)).

<sup>10/</sup> NPRM, 9 FCC Rcd at 2707, Appendix B, proposed 47 C.F.R. § 2.803(e).

<sup>11/</sup> 47 C.F.R. § 2.801(b).

unnecessary regulatory restrictions.<sup>12/</sup> IBM agrees with TIA and EIA that including intentional radiators within the coverage of Section 2.803(e) would promote manufacturers' ability to test and develop their products in very limited circumstances that do not pose a significant risk of interference.

**E. IBM Supports Codification of the Documentation and Record Retention Requirements in the Commission's Rules.**

Although some have expressed concern that the proposed rules would impose unnecessary reporting requirements on parties marketing devices under verification,<sup>13/</sup> IBM believes that complete documentation of verification procedures is an essential component of the Commission's compliance monitoring scheme. Some of the proposed rules mirror the procedures established by the American National Standards Institute ("ANSI"), which are incorporated by reference in the Commission's rules. However, IBM believes that express enumeration of the technical requirements in the rules themselves will make these important standards more readily ascertainable.

Moreover, there are important substantive differences between the ANSI standards and the proposed rules. For instance, ANSI requires records to be retained for three years after the date of the test. The proposed rules, however,

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<sup>12/</sup> See NPRM, 9 FCC Rcd at 2702-03.

<sup>13/</sup> See AT&T Comments at 7 (objecting to proposed rule 2.955(a)(3)).

continue to require records to be kept until one to two years after "the manufacture of the equipment under test has been permanently discontinued."<sup>14/</sup> IBM maintains that, in this context, the record retention requirements in the proposed rules should be adopted because they would increase the likelihood that records pertaining to devices available in the marketplace will be accessible when and if necessary.

II. IBM'S PROPOSAL TO SUBSTITUTE A VERIFICATION PROCEDURE FOR THE CERTIFICATION PROCESS NOW REQUIRED FOR CLASS B PERSONAL COMPUTERS AND ASSOCIATED PERIPHERALS WOULD ENHANCE THE COMMISSION'S ABILITY TO ENSURE THE INTEGRITY OF ITS RF EMISSION STANDARDS.

The National Association of Broadcasters ("NAB") generally supports the Commission's proposed rule changes, but "urges the Commission to ensure that its regulations have sufficient 'teeth' to act as a deterrent to those that would offer unauthorized devices for sale."<sup>15/</sup> The Association for Maximum Service Television ("MSTV") is concerned that the "liberalization" of the marketing rules will increase "spurious emissions" which, when combined with emissions from a host of

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<sup>14/</sup> See NPRM, 9 FCC Rcd at 2709, Appendix B, proposed 47 C.F.R. § 2.938(c) (data for devices subject to certification must be kept for one year after the end of manufacturing); 47 C.F.R. § 2.955(b) (data for devices subject to verification must be kept for two years after the end of manufacturing).

<sup>15/</sup> NAB Comments at 2-4.



other potential sources,<sup>16/</sup> will have a "synergistic effect" that will ultimately lead to "spectrum chaos."<sup>17/</sup> IBM's proposal addresses both of these concerns.

IBM has proposed that the Commission substitute verification for certification of personal computer ("PC") products. Such a substitution would not in any manner dilute the substantive marketing requirements or reduce the more rigorous RF emission limits for these products.<sup>18/</sup> In addition, it would sharpen precisely the kind of "teeth" that already exist in the rules by allowing the Commission to deploy its resources more effectively to enforcing the substantive requirements of those rules.

By streamlining its approval procedures, the Commission could allocate scarce and valuable enforcement

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<sup>16/</sup> MSTV's 1989 Petition for Inquiry, cited in its comments at note 5, details numerous potential sources of potential television interference, among which RF emissions from unintentional radiators is but one, and one that MSTV mentioned only briefly. See MSTV Petition for Inquiry at 11-26 (Oct. 4, 1989) (sources of interference include co-channel and adjacent channel television stations, field sensor security systems, wireless microphones, ultrasonic medical diagnostic machines, "leaky" cable television systems, amateur and citizen band radio, local government radio, noncommercial FM radio stations, paging systems, and vehicle recovery systems).

<sup>17/</sup> MSTV Comments at 2-4.


<sup>18/</sup> IBM has proposed one minor revision to the marketing rules to permit manufacturers to sell, as well as deliver, prototype devices to commercial users for pre-announcement beta testing and product development. As noted in IBM's opening comments, this proposal would involve only prototypes used for development purposes, and would be limited to companies engaged in associated or complementary product development activities.

resources to activities such as random market audits. Such activities are more likely to discover rule violations than the examination of carefully prepared certification applications. The Commission could thereby reduce the risk of harmful interference from noncomplying PC products -- including those that may have been modified following certification. In addition, as IBM noted in its comments, its proposal would help achieve the Commission's goal of reducing unnecessary regulation and "stimulating economic growth" by decreasing the administrative burdens on manufacturers.<sup>19/</sup>

#### CONCLUSION

For the reasons stated, IBM urges that the Commission's proposal to amend its rules pertaining to the regulation of digital devices be adopted with the modifications and additions suggested above and in IBM's opening comments.

Respectfully submitted,

  
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<sup>19/</sup>

NPRM, 9 FCC Rcd at 2702.

**CERTIFICATE OF SERVICE**

I, W. Kenneth Ferree, hereby certify that I have this 4th day of October, 1994, caused to be delivered by first-class mail (except as noted) the foregoing Reply Comments of International Business Machines Corporation to the persons named on the attached service list.

  
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